IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8286 OF 2006

Narayan P.Jadhav and anr. ...Petitioners

vs.

Shakuntala Ghansham Shaha & Ors. ...Respondents

Mr.Amit Borkar for the Petitioners
Mr.M.S.Karnik for Respondent Nos.1 and 2

CORAM: A.S.OKA,J.
DATE : MAY 3,2007.

P.C.:

1. Heard the learned Advocate for the Petitioners and the learned Advocate for Respondent Nos.1 and 2. Considering the facts and circumstances of the case, taken up for final hearing at admission stage.

2. The first and second Respondents are original Plaintiffs. The service of notice to other Respondents is not necessary. The first and second Respondents filed a suit for perpetual injunction on 3rd April 2003. An application for temporary injunction was taken out along with the suit. On 2nd May 2003, a detailed reply was filed by the present Petitioners (original first and second Defendants) to the application for temporary injunction.

3. The Petitioners were under an impression that the said reply filed by them was also the written statement and

therefore an application made by the Petitioners at Exh.79 on 6th August 2005 for the amendment of the written statement. A reply was filed by the first and second Respondents opposing the amendment on merits. Even in the said reply, it was not pointed out that what was filed by the Petitioners was a reply to the Application for temporary injunction and not the written statement. The Trial Court rejected the said application, by order dated 7th December 2005. While rejecting the application, the Trial Court recorded a finding that though a detailed reply was filed by the Petitioners at Exh.30 to the Application for temporary injunction, there was no pursis filed by the Petitioners for treating the said reply as a written statement. The learned Judge without going into the technicalities decided the application for amendment by treating the reply at Exh.30 as a written statement.

4. An Application was made at Exh.94 by the Petitioners praying that a pursis may be taken on record for treating the reply filed to the application for temporary injunction as the written statement. By the order impugned dated 22nd August 2006, the learned Judge rejected the said application made by the Petitioners at Exh.94. The learned Judge held that the written statement was not filed within a period of 90 days from the date of service of summons and no exceptional or extraordinary circumstances are placed on record by the Petitioners for belatedly filing the pursis.

5. I have considered the submissions made by the learned Advocates for the parties. The only prayer made by the Petitioners in the Application at Exh.94 was for taking the pursis on record for treating the reply at Exh.30 as the written statement. Thus, the submission in substance was that the reply which was filed by the Petitioners on 2nd May 2003 should be treated as their written statement. It must be noted here that till 7th December 2005, when the Petitioners made an application at Exh.79, both the parties were under an impression that the reply at Exh.30 was adopted as the written statement.

6. The effective prayer made at Exh.94 was that the reply filed at Exh.30 should be treated as the written statement. The reply was filed on 2nd May 2003 i.e. well within 30 days from the date of service of summons to the Petitioners. As the contention of the Petitioners was that the said reply which was filed within the time provided by law for filing a written statement should be treated as their written statement, there is no question of the Petitioners making out a case of exceptional or extraordinary circumstances. The learned Trial Judge ought to have allowed the Petitioners to file the pursis. The effect of filing pursis would have been to treat the reply filed on 2nd May 2003 as the written statement. The effect of acceptance of the pursis will be

that the written statement will have to be treated as filed on 2nd May 2003. Therefore, in the facts of the case, there was no delay at all in filing the written statement on the part of the Petitioners in view of subsequent pursis sought to be filed by them. Therefore, Petition must succeed and the impugned order will have to be quashed and set aside.

7. Hence, I pass the following order :

i) Impugned order dated 22nd August 2006 is quashed and set aside and the Application at Exh.94 made by the Petitioners is allowed. The reply filed by the Petitioners at Exh.30 shall be treated as their written statement.

ii) There will be no order as to costs.

JUDGE